IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.909 OF 1999

Suvarna Processors, a partnership]
firm registered under the]
provisions of the Indian]
Partnership Act having its factory]
at Khetan Industries Compound,]
Ramkrishna Chemburkar Marg,]
Behind Bharat Refineries, Mahul]
(Chembur) Mumbai-400074]..Petitioners

Vs.

1. The Municipal Corporation of]
Greater Mumbai having its]
office at Mahapalika Marg,]
Mumbai-400001]
2. The Municipal Commissioner]
of Greater Mumbai, having its]
office at Municipal]
Corporation of Greater]
Mumbai, Mahapalika Marg,]
Mumbai-400001]
3. The Deputy Municipal]
Commissioner of Greater Mumbai]

having its office at]
Municipal Corporation of]
Greater Mumbai, Mahapalika]
Marg, Mumbai-400001]

4. The Assistant Engineer Water]
Works of the Municipal]
Corporation of Greater Mumbai]
having his office at]
Municipal Corporation of]
Greater Mumbai M/West Ward]
1st Road, Chembur, Mumbai]

5. State of Maharashtra]
Sachivalaya, Mumbai]..Respondents

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Mr.Vibhab Krishnan with Ms.Kiran Wadhwa
with Chirag Balsara i/b Divya Shah and
Associates for Petitioners
Mr.V.Mahadik for B.M.C.-Respondent

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CORAM : DR.S.RADHAKRISHNAN AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : NOVEMBER 15,2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. In this petition under Article 226 of the Constitution of India, petitioners have prayed for

cancellation of impugned bills relating to sewerage charges and the notice dated 11.2.1999 wherein it is stated that if the bills for sewerage charges were not paid by the petitioners, their water supply would be cut-off.

2. The petitioners are a partnership firm carrying on business of dyeing and printing fabrics from their factory situated at a plot of land located at Anik Village, Chembur. Petitioners have been in occupation of the said plot since 1976 and have been paying since that time all out goings in respect thereof including water and sewerage charges till about September, 1997. The effluent generated by them in the process of dyeing and printing is treated in their effluent treatment plant and after being treated, the effluents are discharged into a creek through the drainage system constructed by the petitioners at their own costs. It is the specific case of the petitioners that the said drainage system is owned by them, constructed by them and is cleaned and maintained by the petitioners. The petitioners are not connected to any municipal sewer and/or any other municipal infrastructure such as pipe, storm water drain, dhappa drain, built up drain, open storm

water drain, any other general drain or to any arrangement by the municipality which has the effect of transporting fluid water/sludge for disposal.

3. Around September, 1997, the petitioners learnt about the judgment of **this Court dated 5.2.1997 in Writ Petition No.1179 of 1990 in Hindustan Petroleum Corporation Ltd. Vs. Municipal Corporation of Greater Bombay and others,** wherein this Court had held that sewerage charges are payable only when there is an element of service in relation to sewerage provided by the Municipal Corporation to the particular premises. On 17.9.1997 the petitioners addressed a letter to the respondents stating that there were no sewerage facilities provided to them by the respondents and that therefore, they should not be charged sewerage charges. Thereafter by subsequent letters dated 7.11.1997, 18.11.1997 and 12.12.1997, the petitioners once again brought to the notice of the respondents that they should not charge the petitioners sewerage charges since no sewerage facilities were provided to them by the respondents. However, by letter dated 18.12.1997, the respondents informed the petitioners that levy of the sewerage charges was compulsory. On 11.2.1999 the respondents

issued a notice to the petitioners stating that if they do not pay the sewerage charges for the months of June, July and August, 1998, after three days from the service of the notice, their water supply would be cut-off. The said notice was received by the petitioners on 19.3.1999.

4. The learned counsel for the petitioners has stated that pursuant to the provisions of Section 170 of the Bombay Municipal Corporation Act, 1888 and in exercise of powers conferred thereunder the Standing Committee of the Municipal Corporation has made and prescribed Water Charges and Waste Removal Rules, 1987. The relevant Rule 4.1 of the said Rules, reads as under:

> . 4.1 Wherever water is supplied to any premises by meter measurements, the Commissioner may instead of levying sewerage tax, levy a sewerage charge equivalent to 50% of the prescribed water charges in force from time to time on such premises provided such premises are connected to the Municipal sewer and/or any other municipal infrastructure such as pipe, storm water drain, dhappa drain, built up drain, and open storm water drain any other general drain or to any arrangement which has the effect of transporting fluid water/sludge for disposal.

5. The learned counsel for the petitioners has

submitted that whenever water is supplied by the municipal corporation a sewerage charge can be charged only if the premises are connected to the municipal sewer and/or any other municipal infrastructure or any arrangement which has the effect of transporting such fluid water/sludge for disposal. He has submitted that the effluents from their plant, are discharged into the creek via drainage system constructed by the petitioners at their own expenses. The said effluent flows through their drainage system directly into the creek. The petitioners are not connected to any municipal sewer or any other municipal infrastructure or arrangement which has the effect of transporting fluid water/sludge for disposal. In such case, they cannot be called upon to pay sewerage charges. The statement of the learned counsel for the petitioners that the drainage system has been constructed, cleaned and maintained by the petitioners entirely at their own costs and that it is not connected to the municipal sewer and/or any other municipal infrastructure or any municipal arrangement which has the effect of transporting such fluid water/sludge for disposal, is not controverted by the Respondent Municipal Corporation.

6. The counsel for the petitioners has contended that as the premises of the petitioners or their sewerage system or the channel through which the petitioners discharge their effluents is not connected to any Municipal sewer or infrastructure or any other municipal arrangement, the petitioners are not liable to pay sewerage charges under the provisions of rule 4.1 of the Sewerage Rules. He furher submitted that until and unless the premises of the petitioners or their drainage system is so connected, the petitioners cannot be called upon to pay the sewerage charges.

7. The learned counsel for the petitioners has placed reliance upon the decision of this Court **in Hindustan Petroleum Corporation Ltd.(supra).** In the said case, Rule 4.1 of the Sewerage Rules, was interpreted that there has to be actual and physical connection to any municipal sewerage and/or municipal infrastructure or to any other arrangement of the municipal corporation which has the effect of transporting fluid water/sludge for disposal. In the said case also, the petitioners therein like the petitioners in the present case, are the owners of

the drainage system. The material on record, in our opinion, clearly shows that the petitioners are the owners of the said drainage system. The said decision would squarely apply to the facts of the present case.

8. It is pertinent to note that the said decision was challenged by the Municipal Corporation by filing Civil Appeal No. 6299 of 1997 before the Supreme Court and by order dated 23.8.2001 by a detailed order, the said appeal came to be dismissed. The factual and legal position in that case and the present case is the same. In this view of the matter, we are of the opinion that in the facts and circumstances of this case, it was not competent for the Bombay Municipal Corporation to levy sewerage charges. The petition must, therefore, succeed. The notice of demand of sewerage charges and notice dated 11.2.1999 stating therein that if the sewerage charges are not paid, the water supply of the petitioners would be cut-off, are hereby quashed and set aside. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

9. So far as the amount of Rs.19,00,000/- which has already been paid by the petitioners from the year

April 1987 to 1998, the petitioners be given credit by adjusting the same against water charges payable by the petitioners in future.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]